

**Systems with Reliability, Inc. and Duane L. Albaugh. Case 6-CA-27653**

December 26, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On June 28, 1996, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt his recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Systems with Reliability, Inc., Ebensburg, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Clifford E. Spungen, Esq.*, for the General Counsel.  
*W. Patrick James, Esq.*, of Johnstown, Pennsylvania, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

MARVIN ROTH, Administrative Law Judge. This case was heard at Johnstown, Pennsylvania, on May 1, 1996. The charge was filed on October 26, 1995, by Duane L. Albaugh, an individual. The complaint, which issued on February 29, 1996, alleges that Systems with Reliability, Inc. (Respondent or the Company) violated Section 8(a)(1) of the National Labor Relations Board Act. The gravamen of the complaint is that the Company allegedly discharged employee John P. Yuhás because he engaged in concerted activity by attempting to resolve a dispute between another employee and the Company, and by telling the Company he would call the Occupational Safety and Health Administration (OSHA) regarding workplace safety issues of concern to Yuhás and other employees. The Company, by its answer, denies the commission of the alleged unfair labor practices. All parties were afforded full opportunity to participate, to present relevant evi-

dence, to argue orally, and to file briefs. The General Counsel and the Company each filed a brief.

On the entire record in this case and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by the General Counsel and Respondent, I make the following

**FINDINGS OF FACT**

**I. THE BUSINESS OF RESPONDENT**

The Company, a Pennsylvania corporation, with an office and place of business in Ebensburg, Pennsylvania, is engaged in the manufacture of broadcast antennas for radio and television broadcasting stations. In the operation of its business, the Company annually purchases and receives goods and materials valued in excess of \$50,000 directly from points outside of Pennsylvania. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES: THE TERMINATION OF JOHN YUHAS**

The Company is a family managed business. Ed Edmiston is president. David Edmiston is corporate secretary, and in charge of shipping and receiving, and export documentation. Robert Edmiston is production supervisor.

The Company has about 17 shop employees, including assembly workers, machinists, and three welders. At the time of the events in question, the welders were John Yuhás, Duane (Dewey), Albaugh, and Mark Czarnik. Robert Edmiston was their immediate supervisor.

The welders worked with Methyl Ethyl Ketone (MEK), a degreaser solvent used to clean copper and brass parts. It is undisputed that MEK is a hazardous, inflammable material which gives off a noxious odor. On several occasions, sparks from welding ignited MEK or rags soaked with MEK, causing fires, and on one occasion, a large fire. The three welders testified, in sum, that MEK causes such symptoms as nausea, dizziness, watering of eyes, and skin and throat irritation. David Edmiston admitted in his testimony that MEK fumes are dangerous, and he would not want to breathe them.<sup>1</sup>

The three welders testified in sum as follows: They talked among themselves about the problems with MEK. They wanted better ventilation in the workplace. They talked about going to the Occupational Safety and Health Administration. (The Company's facility is subject to inspection by OSHA, the Environmental Protection Administration (EPA), and the Pennsylvania Department of Environmental Protection (DEP).) However, they did not contact any of the agencies prior to October 20, 1995.<sup>2</sup> Instead they went to management. They talked to the Edmistons, and requested a meeting. The Edmistons said they would look into the matter, and sometimes agreed to a meeting. However, they never got back to the employees. To the employees' knowledge, nothing was done about their complaints prior to the terminations of Yuhás and Albaugh in October. Czarnik, the only remain-

<sup>1</sup> In referring to witness' testimony, I have sometimes referred to their admissions in the present hearing concerning their testimony in the contested unemployment compensation proceeding brought by Yuhás following his termination.

<sup>2</sup> All dates are for 1995 unless otherwise indicated.

ing welder among the three, testified in sum that after October, the Company installed exhaust hoods and an air filter system, utilized a shop-vac to pick up dust, and kept the MEK barrel (with MEK soaked rags) out of the welding area. Czynnik further testified that in December the Company conducted air testing, which the welders regarded as an unfair sample, because there was no welding in progress at the time.

David Edmiston initially testified that Yuhas complained once that the rag bag should be kept out of the welding area. Edmiston agreed, and the bag was moved to the assembly area. However, at the compensation hearing, Edmiston, after initially testifying that there were no complaints from the welders about safety conditions, subsequently admitted that there were complaints about inadequate ventilation "all summer long." Robert Edmiston testified that the welders complained at least weekly about storage, use or odor of MEK, and about a pay raise, and requested a meeting with Ed Edmiston.

The Company used fans in the work area during the summer. David Edmiston testified that the Company provided fans in response to the welders' complaints about the MEK odor. As indicated by Czynnik's testimony, the Company did not install more sophisticated ventilation equipment until after Yuhas and Albaugh were terminated. David Edmiston admitted in his testimony that the Company did not conduct any air quality test of its plant between the summer of 1992 and December 1995.

In light of the admissions by David and Robert Edmiston, I credit the testimony of the three welders. As Czynnik was still in the Company's employ at the time of the present hearing, his testimony against the Company's interest is entitled to special weight. I find that the three welders concertedly discussed and complained to management about the MEK conditions, and that with the limited exceptions indicated in Edmiston's testimony, the Company took no action to redress the employees' grievances until after Yuhas and Albaugh were terminated.

On Wednesday morning October 18, David Edmiston was escorting a company supplier through the welding area, when he observed litter in Albaugh's work area. Edmiston told Albaugh to clean up the litter by noon or "get out." Edmiston testified that he "possibly" meant by this that absent cleanup Albaugh would be fired. By the following morning, Albaugh had not cleaned up his work area. David Edmiston prepared a dismissal letter.

On October 19, at 4:30 p.m., the three welders left the shop together at the end of the workday. David Edmiston called Albaugh back into the shop. He did so to inform Albaugh of his discharge. Edmiston testified that he waited until the end of the workday because he did not want other employees present when he terminated Albaugh.

Yuhas and Czynnik waited in the parking lot for a few minutes, and then returned to the facility. Yuhas testified that they heard yelling. However, Czynnik testified that they went back to find out what was happening, and did not hear yelling until they reached the door. I credit Czynnik.

As Yuhas and Czynnik entered the facility, David Edmiston and Albaugh were arguing. Albaugh protested that he did not litter his workplace. Yuhas and Czynnik went over to them, as did Robert Edmiston.

The five persons present testified concerning the ensuing conversation. Some of what was said is disputed. The course of the conversation, and particularly the sequence in which remarks were made, is critical to the merits of this case.

Yuhas testified in sum as follows: Albaugh, and mostly David Edmiston, were yelling and cursing. Albaugh asked why he was fired, asserting that all he did was try to correct the problem with the MEK fumes. David called him a liar. Yuhas asked what was going on. Albaugh said he was fired. Yuhas asked why. Albaugh said it was because he spoke about the MEK fumes. Yuhas asked David why Albaugh was terminated, asserting that Albaugh wanted only to correct the problem with the fumes. He asked if they could compromise. David swore at Yuhas, telling him to keep his nose out of his business. David added, "And you're another one, you haven't been doing any thing here for months either." Yuhas retorted, "If I haven't been doing any thing for months here either, why haven't you laid me off or gotten rid of me." Yuhas added, "For another matter, if you don't straighten out the deal with the MEK, I'm going to call OSHA and they will do something." Albaugh said he would also call OSHA. At this point David swore at Yuhas, telling him to get out and "don't ever come back here." Robert Edmiston told Yuhas to get out, that he was calling the state police. Yuhas retorted, "Listen you bald-headed asshole, go ahead and call them. I've done nothing wrong." The three welders then left the facility. Yuhas understood that he was fired. He did not ask for a lay off, and he did not threaten Robert Edmiston.

Albaugh, in his testimony, substantially corroborated Yuhas' version of the conversation. Czynnik testified in sum as follows: David Edmiston was evidently telling Albaugh that he could not collect unemployment compensation. Yuhas asked what was going on. Albaugh said he was terminated. David said he had asked Albaugh to pick up his trash. Albaugh replied, "I'll clean up that area when you clean up this place." David told Yuhas and Czynnik to leave the building, that they had no business being there after hours. Yuhas said he would contact OSHA if something wasn't done with the situation. Albaugh also referred to OSHA. Czynnik did not hear Yuhas request a layoff or threaten to get anyone. Czynnik initially testified that he did not recall David Edmiston's response to the statements about OSHA. However, Czynnik testified that David told them to leave and never come back. They were told the state police were called. Czynnik did not recall a conversation between Yuhas and Robert Edmiston. Czynnik did not believe he was fired, because he was not in the "screaming match." He did not work the next day, because of car trouble. He returned to work on Monday, October 23.

David Edmiston testified in sum as follows: upon recalling Albaugh to the facility, he handed the termination letter to Albaugh, who read the letter. Albaugh asked about unemployment compensation. He asked what this was about. Edmiston responded in sum that Albaugh failed to comply with his order to clean the work area. Albaugh replied that he did so as a protest for not getting a raise, and other things. Albaugh said he would clean the area "when you clean up your mess." Edmiston understood that Albaugh was referring to the MEK.

David Edmiston further testified in sum as follows: Albaugh was screaming and yelling when Yuhas and

Czyrnik returned to the facility and Robert Edmiston came over. Yuhas said that the welders wanted "to sit down and talk to you about this." There was a lot of yelling and name calling. Yuhas pointed his finger at Robert Edmiston and said, "I'm going to get you, you bald-headed bastard." At this point, David asked his secretary to call the police. Robert considered the remark to be a threat and insubordination. Yuhas said, "You're firing him, you lay me off now." Robert refused, saying, "John, you know we've got too much work. We need you, we need the work done." The welders left. Later the police arrived. Robert did not then discharge Yuhas. However, the following day, after consulting with company counsel, he prepared a discharge letter. Czyrnik called in to report car trouble, but Yuhas did not call in or report to work.

Robert Edmiston corroborated much of David's testimony. However, in one crucial respect, he failed to do so, and inferentially corroborated Yuhas. Robert testified that Yuhas told him, "I'll get you, you bald-headed bastard." However, Robert testified that Yuhas said this as he was leaving the building, after David said he would call the police. Robert testified that he was not sure whether Czyrnik was present at this time (which would explain why Czyrnik did not recall a conversation between Yuhas and Robert). Robert testified that Yuhas did not make any other threats to him. He further testified that the Company had no policy against employees returning to the building, and Czyrnik was not disciplined for doing so.

If, as testified by Robert Edmiston, David threatened to call the police before Yuhas allegedly threatened Robert, then it is evident that something else caused David to take such drastic action. The only other explanation proffered by the witnesses was that testified by Yuhas and Albaugh, namely, that the employees said they would go to OSHA and have them "clean up the fumes." So far as indicated by the witnesses, the only other statement or action to arouse David Edmiston's anger toward Yuhas, was Yuhas' effort to intercede on behalf of Albaugh. Moreover, if David Edmiston was sufficiently angered to call the police, then it is probable, as testified by the employees, that he accompanied this action by telling Yuhas and Albaugh to get out and never come back.

I also find significant a letter dated November 1 from David Edmiston to the Pennsylvania Department of Labor and Industry, in connection with the contested claims of Yuhas and Albaugh for unemployment compensation. Edmiston stated with reference to the events of October 19:

The third and final altercation with Mr. Yuhas occurred after I had given Mr. Albaugh his "Letter of Termination." Mr. Yuhas had already punched his time card and left the building. He returned to the building when he overheard me call to Mr. Albaugh to give him the termination letter. *Mr. Yuhas then started to verbally threaten to have DER, EPA and OSHA shut us down.* He then became enraged at which point we felt the need to call the State Police, which we did. *This action sealed his fate* as we were forced under advisement from our attorney to terminate Mr. Yuhas on October 20, 1995. [Emphasis added.]

Although the letter purported to describe threats by Yuhas, the letter made no reference to any alleged

threat to get Robert Edmiston, either on October 19 or any other time. In sum, Edmiston admitted that he terminated Yuhas in part because Yuhas threatened to contact the regulatory agencies concerning health and safety conditions at the Company's facility.

In its answer to the present complaint, the Company categorically denied that it discharged Yuhas. Rather, the Company asserted that Yuhas repeatedly requested that the Company lay him off, Yuhas subsequently failed to report to work as scheduled, and no further action was taken toward him until the Company was notified that he applied for unemployment compensation. However, in correspondence with the Pennsylvania Department of Labor and Industry, and with OSHA, David Edmiston categorically declared that the Company fired Yuhas because of his threats. As indicated, David and Robert Edmiston testified in sum, that Yuhas requested the Company give him a layoff, but David refused. A respondent's "inability to adhere with consistency to any explanation for its action" in terminating an employee, "warrants an unfavorable inference against that respondent." *Zurn Industries, Inc.*, 255 NLRB 632, 635 (1981), *enfd.* 640 F.2d 683, 694 (9th Cir. 1982), citing *A. J. Krajewski Mfg. Co. v. NLRB*, 413 F.2d 673, 675 (1st Cir. 1969), and *NLRB v. Teknor-Apex Co.*, 468 F.2d 692, 694 (1st Cir. 1972).

For the foregoing reasons, I credit Yuhas' version of the October 19 conversation. I find that when Yuhas and Albaugh said they would contact OSHA if nothing was done to correct the problems with MEK, David Edmiston responded by telling them to get out and never come back. Edmiston thereby intended to and did notify Yuhas he was discharged, and Yuhas reasonably so interpreted Edmiston's remarks. The employees previously and repeatedly complained about the conditions with MEK. However, this was the first time they indicated they would or might contact OSHA. The Company was hostile to OSHA inspections. Edmiston testified that he interpreted Yuhas' statement as a threat to "stop production, hold things up, waste my time."

The Company's assertion in its answer, that it took no action against Yuhas until notified that he filed an application for unemployment compensation, was false. On October 20, David Edmiston sent Yuhas a letter of termination. Edmiston stated that Yuhas was discharged for "a number of reasons, some of which" included (1) insubordination, (2) uncooperative attitude or failure to be compatible with other employees, and (3) misconduct. Edmiston asserted that Yuhas threatened employees on three occasions, that "all avenues have remained open for your compliance but have failed," and that "the other employees have requested that action be taken to secure an unmitigated [sic] workplace free of physical and verbal threats."

The discharge letter was replete with false statements. The Company regarded Yuhas as a good worker. In contrast to Albaugh and Czyrnik, who had worked intermittently for the Company, Yuhas was employed continuously for nearly 5 years. Prior to the encounter on October 19, the Company never disciplined Yuhas, or warned him that he engaged in improper conduct or unsatisfactory performance. No employee ever asked that disciplinary action be taken against Yuhas.

David Edmiston testified that the alleged "insubordination" referred to Yuhas calling Robert Edmiston a bald-headed bastard, and this was also the "biggest misconduct." As

discussed, the credible evidence indicates that Yuhás made the remark after he was fired, and Yuhás did not threaten to get Robert.

David Edmiston further testified that the alleged uncooperative attitude referred to an incident involving Yuhás and Assembly Area Supervisor James Mundok, which occurred one Saturday, about 7 a.m. in early October. The incident involved an argument between them. By way of protest, Mundok abruptly left work and remained out that day and the following Monday without calling in until Monday night. Yuhás explained his version of the incident to David and Robert Edmiston. They decided not to discipline him, and they did not tell him he did anything wrong. David Edmiston testified that he did not have full information about the matter. Mundok testified, in sum, that he returned to work the following Tuesday because he understood that the problem was resolved.

In David Edmiston's letter of November 1 to the Pennsylvania Department of Labor and Industry, he referred to a third incident in which Yuhás allegedly threatened someone. That incident occurred in January 1994, nearly 2 years before Yuhás' termination. Yuhás and David engaged in an argument, in the course of which Yuhás grabbed and pushed David. Ed Edmiston and Mark Czyrnik separated them, and Ed Edmiston suggested they get back to work. Yuhás was not disciplined or told that he did anything wrong.

Regardless of whose version of the January 1994 and Mundok incidents is correct, it is evident that the Company did not attach any significance to either incident, or regard them as reflecting adversely on Yuhás' workplace performance. Rather, after terminating Yuhás, the Company dredged up both incidents in order to bolster its case. The Company's reliance on these incidents was pretextual.

On the basis of the evidence concerning the welders' concerted discussions, complaints and efforts to improve what they regarded as poor safety and health conditions involving company use of MEK, including the statements by Yuhás and Albaugh that they would contact OSHA, the Company's hostility to such efforts, the credited evidence concerning the October 19 conversation, and admissions by the Company, the General Counsel has demonstrated by a preponderance of the credible evidence that Yuhás was terminated because he and Albaugh said they would contact OSHA. As the Company's assertions concerning other reasons or explanations for Yuhás' termination were demonstrably false or pretextual, it follows that the Company failed to meet its burden of persuasion that it would have terminated Yuhás in the absence of such activity.

The Board's Regional Office declined to proceed on Albaugh's charge that he was terminated in violation of Section 8(a)(1). Yuhás and Albaugh filed claims for unemployment compensation. The Company contested their claims. The office of Employment Security initially denied Yuhás' application. Following an evidentiary hearing, a referee held that Yuhás was entitled to unemployment compensation benefits because "there is nothing in the record to support a finding that the claimant is guilty of misconduct in connection with his work." The Unemployment Compensation Board of Review reversed that decision, holding that: "In the absence of having good cause for addressing the employer with profane and abusive language, the claimant's actions rise to the level of willful misconduct." Yuhás appealed that

decision to the Commonwealth Court, and the matter was still pending at the time of the present hearing.

I have taken into consideration the decisions of the referee and the Board of Review. For purposes of the present case, I am unable to attach any weight to either decision. First, as indicated, Yuhás' claim has not been finally resolved. Second, both the referee and the Board of Review made their findings in conclusory fashion, without explaining why either credited one version over another. Third, the Board of Review's decision failed to indicate that the Review Board gave any deference to the referee's credibility resolutions and findings of operative fact, as is the practice in federal administrative proceedings. See *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 494 (1951). Fourth, neither the referee's decision, nor that of the Board of Review, made any reference Yuhás' complaints about MEK, which as discussed, is critical to the unfair labor practice case. See generally *Duquesne Electric*, 212 NLRB 142 fn. 1 (1974).

The Company discharged Yuhás because he engaged in concerted activity protected under Section 7 of the Act. The action which precipitated Yuhás' discharge, i.e., his statement that he would complain to OSHA, was one step in the concerted efforts of the three welders to improve safety and health conditions in their work place. Both Yuhás and Albaugh asserted they would contact OSHA if the Company failed to correct the problems with MEK. Technically, Albaugh was not employed by the Company at that point, having been discharged. However, Albaugh was still a member of the working class, and therefore still an "employee" within the meaning of Section 7. *Little Rock Crate & Basket Co.*, 227 NLRB 1406 (1977). Moreover, although Czyrnik did not participate in the October 19 conversation, he was involved in the efforts to improve shop conditions, and after October 19, continued in such efforts together with his fellow welders. Yuhás also engaged in protected concerted activity by protesting Albaugh's discharge and seeking an accommodation between the Company and Albaugh. *Kawasaki Motors Corp.*, 268 NLRB 936, 951 (1984).

By saying that he would contact OSHA, Yuhás engaged in concerted activity for the purpose of mutual aid and protection; specifically, to improve health and safety conditions in the shop. David and Robert Edmiston testified, in sum, that the Company has never been cited for any health or safety violations in connection with its use of MEK. However, the fact that the Company may have complied with pertinent legal standards, is immaterial. The welders had a protected right to seek more than compliance with minimum standards or to seek redress of conditions which they believed or considered to be violations, through resort to regulatory agencies, whether or not their contentions were correct. *Eastex, Inc. v. NLRB*, 437 U.S. 556, 564-567 (1978).

For the foregoing reasons, I find that the Company violated Section 8(a)(1) by discharging Yuhás. I further find that Yuhás did not disqualify himself from the usual remedies of reinstatement and backpay, by calling Robert Edmiston a bald-headed asshole. The evidence indicates that both employees and management commonly used profanity and epithets when speaking to each other. Moreover, Robert Edmiston provoked Yuhás by saying that he was calling the state police. Edmiston thereby inferred that Yuhás might be arrested, although he did nothing wrong. Plainly, Yuhás did not engage in outrageous conduct which rendered him unfit

for employment. See *Alto-Shaam, Inc.*, 307 NLRB 1466, 1476-1477 (1992), enf'd. 996 F.2d 1219 (7th Cir. 1993), cert. denied 114 S.Ct. 442 (1993); *Hit 'n Run Food Stores*, 231 NLRB 660, 664 (1977); *Casa San Miguel*, 320 NLRB 534 fn. 2 (1995).

#### CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discharging John Yuhas because he concertedly complained to the Company about workplace health and safety conditions in telling the Company he would contact OSHA unless such conditions were improved, the Company has violated and is violating Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Company has violated Section 8(a)(1) of the Act, I shall recommend that it be required to cease and desist therefrom and from engaging in like or related unlawful conduct, and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Company discriminatorily terminated John Yuhas, I recommend that the Company be ordered to offer him immediate and full reinstatement to his former job or, if it no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of earnings and benefits that he may have suffered from the time of his suspension to the date of the Company's offer of reinstatement. I shall further recommend that the Company be ordered to remove from its records any reference to his unlawful termination, to give him written notice of such expunction, and to inform him that its unlawful conduct will not be used as a basis for future personnel actions against him. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>3</sup> It will also be recommended that the Company be required to preserve and make available to the Board, or its agents, on request, payroll and other records to facilitate the computation of backpay due.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

<sup>3</sup>Under *New Horizons*, interest on and after January 1, 1987 is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment of 26 U.S.C. § 6621.

<sup>4</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

#### ORDER

The Respondent, Systems with Reliability, Inc., Ebensburg, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging employees or in any other manner discriminating against them with regard to their hire or tenure of employment or any term or condition of employment, because they engage in protected concerted activity by complaining to their fellow employees, the Company or to governmental authorities about workplace health and safety conditions or other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer John Yuhas immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for losses he suffered by reason of the discrimination against him, as set forth in the section of the decision entitled "The Remedy."

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of John Yuhas, and within 3 days thereafter notify him in writing that this has been done and that the discharge will not be used against him in any way.

(c) Preserve, and within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Ebensburg, Pennsylvania facility, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 26, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible

<sup>5</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge employees or in any other manner discriminate against them with regard to their hire or tenure of employment or any term or condition of employment because they engage in protected concerted activity by complaining to their fellow employees, to us, or to governmental

authorities about workplace health and safety conditions, or other terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in concerted activities, or to refrain therefrom.

WE WILL offer John Yuhas immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights or privileges previously enjoyed, and make him whole for losses he suffer by reason of the discrimination against him.

WE WILL remove from our files any reference to the unlawful termination of John Yuhas, and notify him in writing that this has been done and that his unlawful discharge will not be used against him in any way.

SYSTEMS WITH RELIABILITY, INC.